



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

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ANDREA SHERIDAN ORDIN
County Counsel

October 5, 2011

TO: SACHI A. HAMAI
Executive Officer
Board of Supervisors

Attention: Agenda Preparation

FROM: JOHN F. KRATTLI 
Senior Assistant County Counsel

RE: **Harlan Dana Dejongh v. County of Los Angeles**
Los Angeles Superior Court Case No. MC 020 963

Attached is the Agenda entry for the Los Angeles County Claims Board's recommendation regarding the above-referenced matter. Also attached are the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan to be made available to the public.

It is requested that this recommendation, the Case Summary, the Summary Corrective Action Plan, and the Corrective Action Plan be placed on the Board of Supervisor's agenda.

JFK:rfm

Attachments

Board Agenda

MISCELLANEOUS COMMUNICATIONS

Los Angeles County Claims Board's recommendation: Authorize settlement of the matter entitled Harlan Dana Dejongh v. County of Los Angeles, Los Angeles Superior Court Case No. MC 020 963, in the amount of \$290,000 and instruct the Auditor-Controller to draw a warrant to implement this settlement from the Department of Public Works' budget.

This lawsuit arises from injuries sustained in a motorcycle accident allegedly caused by a defective road repair by the Department of Public Works.

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	Harlan Dana Dejongh vs. County of Los Angeles
CASE NUMBER	MC 020963
COURT	Los Angeles Superior Court
DATE FILED	October 23, 2009
COUNTY DEPARTMENT	Department of Public Works
PROPOSED SETTLEMENT AMOUNT	\$ \$290,000
ATTORNEY FOR PLAINTIFF	Bruce Wolfe, Esq.
COUNTY COUNSEL ATTORNEY	Tighe F. Hudson Principal Deputy County Counsel
NATURE OF CASE	<p>This is a lawsuit filed by Harlan Dejongh for personal injuries he sustained in a motorcycle accident, which occurred on November 10, 2007, as the result of an alleged defective road repair by County personnel. Plaintiff lost control of his motorcycle when he encountered the location and sustained personal injuries.</p> <p>Due to the inherent risks and uncertainties involved in a trial, the potential liability and potential exposure to an adverse verdict, the County proceeded with settlement negotiations which resulted in this recommended</p>

settlement with the claimant.

The Los Angeles County
Department of Public Works
concurs in this settlement
recommendation.

PAID ATTORNEY FEES, TO DATE	\$	\$42,972
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PAID COSTS, TO DATE	\$	\$5,408
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Summary Corrective Action Plan

County of Los Angeles Department of Public Works



The intent of this form is to assist departments in writing a corrective action plan summary for attachment to the settlement documents developed for the Board of Supervisors and/or the County of Los Angeles Claims Board. The summary should be a specific overview of the claims/lawsuits' identified root causes and corrective actions (status, time frame, and responsible party). This summary does not replace the Corrective Action Plan form. If there is a question related to confidentiality, please consult County Counsel.

Lawsuit: Date of incident/event	Harlan Dejongh November 10, 2007
Briefly provide a description of the incident/event:	On November 10, 2007, at 6:40 p.m., 56-year-old Harlan Dejongh was driving his motorcycle southbound on Sage Tree Street, near Elizabeth Lake Road in the unincorporated area of Palmdale, when he lost control of his vehicle due to loose gravel on the roadway. As a result, Mr. Dejongh fell to the ground and sustained injuries to his right hip, shoulder, and head.

1. Briefly describe the root cause of the claim/lawsuit:

On November 7, 2007, Public Works Road Maintenance Division (RMD) performed a Thin Bituminous Repair of the roadway at the northwest corner of Sage Tree Street and Elizabeth Lake Road, which apparently unraveled within 3 days after installation. Based on our review, we believe that the repair failed due to inexperience in the use of the PG64-10 Performance Graded asphalt. This particular asphalt was adopted for Statewide use in 2006 and was incorporated for use by Public Works shortly thereafter.

2. Briefly describe recommended corrective actions:
(Include each corrective action, due date, responsible party, and any disciplinary actions if appropriate)

Upon notification of loose gravel in the roadway around the incident date of November 10, 2007, the RMD Superintendant immediately dispatched a sweeper to sweep the roadway and clear it of all debris, and placed loose gravel warning signs in the area as an added precautionary measure.

RMD believes that this incident does not require a systematic review of all thin bituminous repairs placed either during this period of time or in the area. In an effort to avoid future instances of thin bituminous repair features, RMD in conjunction with Geotechnical & Materials Engineering Division will prepare a memorandum to all RMD personnel, which will include guidance on the application of thin bituminous repairs on the roadways. The guidelines will be finalized and approved by July 30, 2011, and will be incorporated into the RMD Tailgate Training Documents to be reviewed annually.

3. State if the corrective actions are applicable to only your department or other County departments.
(If unsure, please contact the Chief Executive Office Risk Management Branch for assistance)

County of Los Angeles Department of Public Works
Summary Corrective Action Plan

- ☐ Potentially has a Countywide implication.
- ☐ Potentially has implications to other departments (i.e., all human services, all safety departments, or one or more other departments).
- ☒ Does not appear to have Countywide or other department implications.

Signature: (Risk Management Coordinator) <i>Steve M. Hennessee</i> Steven G. Steinhoff	Date: 6-23-11
Signature: (Director) Gail Farber <i>Gail Farber</i>	Date: 7/5/11

Chief Executive Office Risk Management Branch

Name: <i>LEO COSTANTINO</i>	Date:
Signature: <i>[Signature]</i>	Date: 7/7/2011

ME.psr
P4:DEJONGH SCAP2

[Handwritten initials]

**DEPARTMENT OF PUBLIC WORKS
CORRECTIVE ACTION PLAN**

LAWSUIT OF: Dejongh, Harlan

INCIDENT DATE: November 10, 2007

INCIDENT LOCATION: Sage Tree Street, near Elizabeth Lake Road, unincorporated Palmdale area

RISK ISSUE:

The County is responsible for inspecting and maintaining the roadway at the incident location and could be held liable for personal injuries due to failing to correct a dangerous condition on public property

INVESTIGATIVE REVIEW:

On November 10, 2007, at 6.40 p.m., 56-year-old Harlan Dejongh was driving his motorcycle southbound on Sage Tree Street, near Elizabeth Lake Road in the unincorporated area of Palmdale, when he lost control of his vehicle due to loose gravel on the roadway. As a result, Mr. Dejongh fell to the ground and sustained injuries to his right hip, shoulder, and head

On November 7, 2007, Public Works Road Maintenance Division (RMD) performed a Thin Bituminous Repair of the roadway at the northwest corner of Sage Tree Street and Elizabeth Lake Road, which apparently unraveled prior to the incident. Based on our review, we believe that the repair failed due to inexperience with installation using PG64-10 Performance Graded asphalt. The asphalt being applied must be a minimum temperature and it must be thoroughly raked, especially on thin sections and at feathered edges to avoid aggregate breaking loose after completion of the patch. This particular asphalt binder was adopted for statewide use in 2006 and was incorporated for use by Public Works shortly thereafter. Based on our findings, we believe that the use of this particular asphalt may not be suitable for Thin Bituminous Repair work except during hot weather conditions

POLICY ISSUES:

As part of their maintenance operations, RMD reviews all improvements within the road right of way at least once a month and when maintenance problem conditions are found, corrective actions are taken. Issues arose as to the appropriateness and quality of a Thin Bituminous Repair at the incident location

**DEPARTMENT OF PUBLIC WORKS
CORRECTIVE ACTION PLAN**

CORRECTIVE ACTION:

Upon notification of loose gravel in the roadway around the incident date November 10, 2007, the RMD Superintendant immediately dispatched a sweeper to sweep the roadway and clear it of all debris, and placed loose gravel warning signs in the area as an added precautionary measure.

RMD believes that this incident does not require a systematic review of all thin bituminous repairs placed either during this period of time or in the area. In an effort to avoid future instances of thin bituminous repair features, RMD in conjunction with Geotechnical & Materials Engineering Division will prepare a memorandum to all RMD personnel, which will include guidance on the application of thin bituminous repairs on the roadways. The new guidelines will be finalized and approved by July 30, 2011, and will be incorporated into the RMD Tailgate Training Documents to be reviewed annually

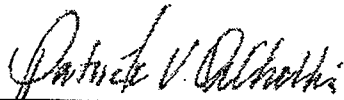
Reviewed & Recommended:

Approved:



David MacGregor
Assistant Deputy Director

6/21/11
Date



Patrick V. DeChellis
Deputy Director

6-27-2011
Date

ME.psr
P4:IDEJONGH CAP3